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SHEILA SHARON STEVEN KUMAR v. PP

COURT OF APPEAL, PUTRAJAYA

HADHARIAH SYED ISMAIL JCA

AZMAN ABDULLAH JCA

AZMI ARIFFIN JCA

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[CRIMINAL APPLICATION NO: B-07-89-09-2023]

6 MARCH 2024

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Abstract – *An order made upon revision under s. 323 of the Criminal Procedure Code where an order of discharge amounting to acquittal is replaced with discharge not amounting to acquittal without the accused and/or her counsel being notified of the hearing of the matter and given an opportunity of being heard is gravely prejudicial and occasions a serious miscarriage of justice. When an accused is denied the notice and opportunity to answer the issues and defend himself/herself, there is a breach of the rules of natural justice, in that, the audi alteram partem rule has not been observed.*

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CRIMINAL PROCEDURE: *Revision – Order – Appeal against – Accused charged under ss. 506 and 509 of Penal Code – Decision made by Magistrate for accused to be discharged amounting to acquittal ('DNA') – Prosecution applied for revision of decision under s. 323 of Criminal Procedure Code without informing accused and counsel – Order of DNA substituted with order of discharge not amounting to acquittal – Application for leave to appeal against decision – Whether threshold required for leave to appeal satisfied – Whether there was miscarriage of justice – Whether there was breach of rules of natural justice – Whether audi alteram partem rule observed – Whether seeking court's powers of revision backdoor appeal – Whether questions of law arose in course of revision*

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CRIMINAL PROCEDURE: *Proceedings – Leave to appeal – Application for – Appeal against revision order – Accused charged under ss. 506 and 509 of Penal Code – Decision made by Magistrate for accused to be discharged amounting to acquittal ('DNA') – Prosecution applied for revision of decision under s. 323 of Criminal Procedure Code without informing accused and counsel – Order of DNA substituted with order of discharge not amounting to acquittal – Application for leave to appeal against decision – Whether threshold required for leave to appeal satisfied – Whether there was miscarriage of justice – Whether there was breach of rules of natural justice – Whether audi alteram partem rule observed – Whether seeking court's powers of revision backdoor appeal – Whether questions of law arose in course of revision*

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The applicant was charged in the Magistrate's Court under charge sheet No: BD-82-6-06-2023 with two offences under ss. 506 and 509 of the Penal Code ('PC') respectively. In the first charge, the applicant had allegedly committed criminal intimidation against an elderly lady while in the second charge, the appellant had allegedly used words of gesture intended to insult

the modesty of a person against a man. The applicant pleaded not guilty and claimed trial to the charges. The applicant was released on bail. Immediately thereafter, two similar offences under ss. 506 and 509 of the PC under charge sheet No: BD-82-8-06-2023 were levelled against the applicant. The applicant pleaded not guilty and claimed trial to the charges. However, the Deputy Public Prosecutor ('DPP') then applied to withdraw the two offences under the charge sheet No: BD-82-8-06-2023 without giving any reasons for the said withdrawal and requested for a discharge not amounting to an acquittal ('DNAA'). The defence objected and requested for a discharge amounting to an acquittal ('DNA'). After hearing both parties, the Magistrate allowed the defence's application and ordered that the applicant be given a DNA on the second two similar charges under the charge sheet No: BD-82-8-06-2023. After almost one month and a half from the decision of the Magistrate, the DPP wrote a letter to the High Court for a revision under s. 323 of the Criminal Procedure Code ('CPC') of the said decision without informing the applicant and/or her counsel. The revision before the High Court was heard and an order of DNA was substituted with an order of DNAA. The said decision was made in the presence of the DPP and in the absence of the applicant and her counsel. The Judicial Commissioner ('JC') also made a further order, in that, the applicant could be charged again on the said offences. Aggrieved by the decision, the applicant filed a notice of motion ('encl. 1') for leave to appeal from this court pursuant to s. 50(2) of the Courts of Judicature Act 1964. The applicant argued, *inter alia*, that (i) the applicant had satisfied the threshold required for leave to appeal; (ii) there appeared to be a miscarriage of justice; (iii) the applicant and/or her counsel was not informed of the hearing of the matter; (iv) the High Court made the order without giving an opportunity to be heard to the applicant and/or her advocate who was on record from the beginning; and (v) the respondent had neglected to appeal but sought the High Court's powers of revisions as a backdoor appeal.

Held (allowing encl. 1)

Per Azmi Ariffin JCA delivering the judgment of the court:

- (1) The orders of DNAA and a further order that the applicant could be charged again for the said offences made by the JC upon revision without the applicant and/or her counsel being notified of the hearing of the matter and be given an opportunity of being heard in this matter was gravely prejudicial and had certainly occasioned a serious miscarriage of justice to the applicant. The outcome of the revision might not be the same if the applicant had been heard on this critical issue. The argument raised by the DPP that the issue of double filing of the same charges was merely a 'technical glitch' could not hold water. (para 21)

- A (2) It was plain and obvious that there was a breach of the rules of natural justice, in that, the *audi alteram partem* rule had not been observed when the applicant was denied the notice and opportunity to answer the issues and to defend herself. (para 22)
- B (3) Although the respondent was not estopped from filing an application for revision in preference to an appeal, nevertheless, no reasons were offered by the DPP why an appeal was not filed against the decision of the Magistrate within the time permitted by law. Having regard to all the foregoing reasons and submissions made, this court allowed the applicant's notice of motion for leave to appeal since there were questions of law which had arisen in the course of the revision. (paras 25 & 26)
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Case(s) referred to:

- Ketua Pengarah Kastam v. Ho Kwan Seng* [1975] CLJU 72; [1975] 1 LNS 72 FC (*refd*)
Manokaran & Anor v. PP [1978] CLJU 118; [1978] 1 LNS 118 HC (*refd*)
 D *Nor Azman Ghadzali v. PP* [2013] 1 CLJ 938 CA (*refd*)
PP v. Mahathir Muhammad [2013] 2 CLJ 50 CA (*refd*)
PP v. Rahmat Ghazali & Another Appeal [2021] 2 CLJ 207 CA (*refd*)
PP v. Sogas Trading [2020] 4 CLJ 410 HC (*refd*)

Legislation referred to:

- E Courts of Judicature Act 1964, ss. 31, 50(2)
 Criminal Procedure Code, ss. 323, 325
 Federal Constitution, arts. 7, 8
 Penal Code, ss. 506, 509
- For the appellant - M Manoharan, P Subramaniam & M Hariharan; M/s M Manoharan & Co*
- F *For the respondent - Zaki Asyraf Zubir; DPP*
- [Editor's note: For the High Court judgment, please see PP lwn. Sheila Sharon Steven Kumar [2023] CLJU 2940; [2023] 1 LNS 2940 (overruled).]*
- Reported by Suhainah Wahiduddin*
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JUDGMENT

Azmi Ariffin JCA:

Chronology Of Events

- H [1] It is pertinent to set out briefly the chronology of events in order to appreciate the factual matrix of the case.
- [2] On 26 June 2023, the applicant was charged in the Magistrate's Court at Selayang, Selangor under charge sheet No. BD-82-6-06-2023 with two offences under ss. 506 and 509 of the Penal Code respectively. The charges
- I preferred reads as follows:

First Charge

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Bahawa kamu pada 15/6/2023 jam lebih kurang 12.00 tengahari bertempat di No. 8 Jalan SG 1/1, Taman Sri Gombak, di dalam Daerah Gombak, di dalam Negeri Selangor telah didapati melakukan ugutan jenayah ke atas satu perempuan India bernama Silverkoomarie a/p Muthiah, KPT No: 540725-08-5476 dengan niat untuk mendatangkan kegentaran kepada orang itu. Oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 509 Kanun Keseksaan.

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Second Charge

Bahawa kamu pada 15/6/2023 jam lebih kurang 1.00 tengahari bertempat di No. 8 Jalan SG 1/1, Taman Sri Gombak, di dalam Daerah Gombak, di dalam Negeri Selangor dengan niat untuk menghina kesopanan penama Taneswaran a/l Palaraman KPT No: 821030-14-6229 dengan berkata "You tenguk badan you, gemuk botak dan badak sumbu." Oleh yang demikian kamu telah melakukan satu kesalahan di bawah seksyen 506 Kanun Keseksaan.

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[3] The applicant pleaded not guilty and claimed trial to the charges. The applicant was released on bail.

[4] Immediately thereafter, two similar and same offences under s. 506 and s. 509 of the Penal Code under charge sheet No: BD-82-8-06-2023 were levelled against the applicant. The applicant pleaded not guilty and claimed trial to the charges.

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[5] However, the learned Deputy Public Prosecutor then applied to withdraw the two offences under the charge sheet No: BD-82-8-06-2023 without giving any reasons for the said withdrawal and requested for a discharge not amounting to an acquittal (DNAA).

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[6] The defence objected and requested for a discharge amounting to an acquittal (DNA).

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[7] After hearing both parties, the learned Magistrate allowed the defence application and ordered that the applicant be discharged amounting to an acquittal on the second two similar and same charges under the charge sheet No: BD-82-8-06-2023.

[8] After almost 1½ months from the decision of the learned Magistrate, the learned Deputy Public Prosecutor has written a letter dated 11 August 2023 to the High Court for a revision under s. 323 of the Criminal Procedure Code of the said decision without informing the applicant and/or her counsel.

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[9] The revision before the High Court in Shah Alam was heard on 25 August 2023 wherein an order of DNA was substituted with an order of DNAA. The said decision was made in the presence of the learned Deputy

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- A Public Prosecutor and in the absence of the applicant and her counsel. The learned Judicial Commissioner also made a further order in that the applicant can be charged again on the said offences.

[10] Aggrieved by the decision, the applicant filed notice of motion (encl. 1) dated 5 September 2023 for leave to appeal from this Honourable

- B Court pursuant to s. 50(2) of the Courts of Judicature Act 1964.

The Relevant Provisions Of Law

(i) Courts Of Judicature Act 1964

- C 31. Revision of criminal proceedings of subordinate courts.
- The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure Criminal Procedure Code.
- D Jurisdiction to hear and determine criminal appeals
- 50(1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court:
- E (a) in the exercise of its original jurisdiction; and
- (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.
- (2) An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by a Magistrates' Court by such appeal shall be confined to only question of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.
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G (ii) Criminal Procedure Code

325. Powers of Judge on revision
- (1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by ss. 311, 315, 316 and 317 of this Code.
- H (2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by advocate, in his own defence.
- I (3) Nothing in this section shall be deemed to authorize a Judge to convert a finding of acquittal into one of conviction.

(iii) Federal Constitution

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Protection against retrospective criminal laws and repeated trials

7(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

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(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted.

Equality

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8(1) All persons are equal before the law and entitled to the equal protection of the law.

Principles Of Laws In Granting Leave To Appeal

[11] It is trite law that appeals arising from decisions of the Magistrate's Court in criminal matters that come before the Court of Appeal must necessarily be confined to issues of law only and prior leave is required before an appeal can be lodged in the Court of Appeal. The applicant must show whether or not there exist questions of law while it is not so required on the part of the Public Prosecutor.

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[12] In *PP v. Rahmat Ghazali & Another Appeal* [2021] 2 CLJ 207; [2020] MLJU 1954, the Court of Appeal held that:

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[9] Section 50 gives jurisdiction to the Court of Appeal to hear appeals from criminal matters decided in the High Court and it includes appeals from Sessions Court and Magistrates Courts. However, section 50(2) provides a limitation to the manner that appeals emanates from Magistrates Court are brought to the Court of Appeal. It must be noted that section 50(2) provides generally and without qualification that "an appeal shall lie to the Court of Appeal, with leave of the Court of Appeal". It also enacts that "such appeal" shall only be confined to question of law.

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[13] This principle was further echoed in the Court of Appeal case of *Nor Azman Ghadzali v. PP* [2013] 1 CLJ 938; [2013] 1 MLJ 486, where it held as follows:

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[12] From the express wording of s. 50 and in particular to sub-s. (2) thereof, for the Court of Appeal to be conferred jurisdiction two pre-conditions must be fulfilled by the applicant, namely:

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(a) a leave application must be filed within 14 days from the date of the High Court decision; and

(b) it must be shown in the leave application the question of law which arose in the course of the appeal and the determination of which by the High Court has affected the event of the appeal.

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[13] The pre-requisites aforesaid was lucidly explained by Lamin Mohd Yunus PCA in *Public Prosecutor v. Pasupathy s/o Kanagasaby* [2001] 2 MLJ 143; [2001] 2 CLJ 753 where he said:

- A When an accused person desires to appeal, the full force of sub-s. (2) comes into play. He has to apply for 'leave' and that his appeal must be confined to only questions of law which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision.
- B [17] The crucial element of 'question of law' must in our view relates to questions involving the interpretation of relevant and applicable legal principles. It is totally different from questions of facts which require references to facts and evidence and the inferences drawn from the facts. In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.
- C [14] In *PP v. Mahathir Muhammad* [2013] 2 CLJ 50; [2013] 1 MLJ 50, the Court of Appeal speaking through Mohd Hishamudin JCA (as he then was) held as follows:
- D [20] The rationale for limiting the appeal to question of law only is not difficult to appreciate. The cases that emanate from the magistrate's courts are relatively less serious in nature as compared to cases dealt with by the session courts, and in most cases, they involve only finding of facts. Hence, there is very minimal risk of real injustice if further appeals to the Court of Appeal should only be confined to questions of law.
- E **Questions Of Law**
- [15] In the affidavit in support of the application (encl. 2) before us, reference was made to six questions said to be such questions of law and they are as follows:
- F (a) Sama ada terdapat pelanggaran nyata jelas seksyen 325(2) Kanun Tatacara Jenayah yang telah membawa kepada suatu "miscarriage of justice" di mana tertuduh dan/atau peguamnya tidak dimaklumkan dan/atau tidak diberitahu dan/atau tidak diserahkan apa-apa mengenai permohonan semakan jenayah tersebut?
- G (b) Sama ada terdapat pelanggaran secara tidak langsung seksyen 325(3) Kanun Tatacara Jenayah yang mana Yang Arif Hakim telah menukar suatu dapatan "dilepaskan dan dibebaskan" (acquittal) kepada suatu "dilepaskan tanpa dibebaskan" (discharge) dan selanjutnya diperintahkan pemohon boleh dituduh kembali atas pertuduhan yang sama?
- H (c) Sama ada permohonan semakan yang dibuat oleh pihak Responden pada melalui suatu surat yang dikatakan bertarikh 11/8/2023 selepas tamat tempoh rayuan atas keputusan yang dibuat pada 26/6/2023 merupakan suatu penyalahgunaan proses mahkamah yang membawa kepada suatu "miscarriage of justice"?
- I (d) Sama ada permohonan semakan yang dibuat oleh pihak Responden sendiri diluar tempoh rayuan boleh diterima bagi semakan di bawah seksyen 323 Kanun Tatacara Jenayah?
- (e) Sama ada terdapat pelanggaran yang nyata jelas Perkara 7(2), 8(1) Perlembagaan Persekutuan Malaysia?

(f) Sama ada terdapat pelanggaran prinsip “*audi alteram partem*” yang merupakan suatu prinsip asas dasar “natural justice” dalam pendengaran semakan di Mahkamah Tinggi, Shah Alam di mana pemohon serta peguambela pemohon tidak dimaklumkan, tidak diberitahu dan tidak disertakan apa-apa mengenai permohonan semakan jenayah tersebut yang dijalankan, diteruskan dan diputuskan secara tersembunyi?

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The Applicant’s Contention

[16] The applicant’s s argument can be briefly summarised as follows:

- (i) the applicant has satisfied the threshold required for leave to appeal;
- (ii) there appears to be a miscarriage of justice, particularly the provisions in Chapter XXXI of the Criminal Procedure Code under the heading revision was clearly and blatantly not complied with during the revision;
- (iii) the applicant and/or her counsel was not informed of the hearing of the matter;
- (iv) the High Court made the order without giving an opportunity to be heard by the applicant and/or her advocate who was on record from the beginning;
- (v) the respondent has neglected to appeal but sought the High Court’s powers of revisions as a backdoor appeal;
- (vi) the respondent failed to provide good reasons why the appeal was not filed against the decision of the learned Magistrate and why no extension of time was filed;
- (vii) the revision application made by the respondent to the High Court seemed to have contravened arts. 7 and 8 of the Federal Constitution; and
- (viii) the High Court failed to convert the matter into a hearing of an appeal.

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The Respondent’s Contention

[17] The learned Deputy Public Prosecutor in his affidavit in reply affirmed on 3 October 2023 (encl. 5) stated as follows:

- (a) Merujuk kepada persoalan undang-undang yang dirangka seperti di dalam Notis Usul di (Kandungan 1) di Lampiran A yang disertakan, di perenggan 1 sehingga 6 saya sesungguhnya menyatakan bahawa persoalan tersebut bukanlah persoalan undang-undang yang dikehendakkan di bawah peruntukan seksyen 50(2) Akta Mahkamah Kehakiman 1964 tetapi adalah persoalan fakta dan juga percampuran persoalan undang-undang dan fakta;
- (b) Tambahan lagi, jika dilihat kepada perenggan 2 dan 3 persoalan yang dicadangkan oleh Pemohon jelas bukanlah suatu persoalan undang-undang kerana apa yang terlibat adalah hanya berkaitan isu pemfailan

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- A berganda (double filing) di mana semua urusan pentadbiran Mahkamah (administration of the court) bukanlah suatu persoalan undang-undang dan proses semakan jenayah di bawah seksyen 325(3) Kanun Tatacara Jenayah tidak tertakluk kepada tempoh 14 hari sepertimana rayuan jenayah;
- B (c) Selain itu, Responden menyatakan bahawa persoalan yang dicadangkan di perenggan 4, 5 dan 6 bukanlah suatu persoalan undang-undang yang perlu diputuskan oleh Mahkamah Rayuan yang mulia ini kerana tidak timbul isu pelanggaran Perkara 7(2) mahupun Perkara 8(1) Perlembagaan Persekutuan kerana apa yang terjadi hanyalah kesilapan pendaftaran berganda (double filing) di mana kes BD-82-8-06-2023, yang
- C mana pertuduhan di dalam kes tersebut, adalah sama dengan pertuduhan di dalam kes BD-82-6-06-2023. Akibat daripada pemfailan berganda itu, pihak pendakwaan telah mohon untuk kes BD-82-8-06-2023 di dilepaskan tanpa dibebaskan (DNAA) yang mana Mahkamah Majistret telah memberikan perintah lepas dan bebas (acquitted and discharge); dan
- D (d) Selain itu, Responden ingin deposkan di sini bahawa Responden tidak mempunyai sebarang bantahan sekiranya kes BD-82-8-06-2023 yang telah dilakukan pemfailan berganda (double filing) dibatalkan secara pentadbiran, dan pendakwaan boleh diteruskan terhadap Pemohon untuk pertuduhan-pertuduhan di dalam kes BD-82-6-06-2023 yang mana ianya didaftarkan terlebih dahulu terhadap Pemohon. Ini kerana tidak ada isu pendakwaan berganda (double jeopardy) terhadap Pemohon ini dan yang berlaku hanyalah kesilapan pemfailan berganda sewaktu kes didaftarkan di Mahkamah Majistret.
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Our Decisions

- F [18] Before turning to the findings of this Honourable Court, we find it necessary to begin by examining two reported decisions on revisionary powers of the High Court.

- G [19] The power of revision by the High Court are found in s. 31 of the Courts of Judicature Act 1964 and s. 325 of the Criminal Procedure Code. In *PP v. Sogas Trading* [2020] 4 CLJ 410; [2020] MLRHU 127, Mohd Radzi Abdul Hamid JC (as he then was) said:

- H [17] It is well established law that the court will generally exercise its revisionary powers where the lower court fails to comply with the provisions of the law, the decision is grossly erroneous, the findings of fact are not supported by evidence, material evidence of the parties are not considered, there has been an error of law or procedure and where the revision is demanded in the interest of public interest. The primary objective of a revision is to correct a miscarriage of justice which has affected the applicant and the High Court's powers of revision are to be exercised sparingly and judiciously.
- I [21] Therefore, when an applicant neglects to file an appeal against an appealable decision the applicant cannot use the High Court's powers of revision as a back door appeal (*See Ong She Sen v. PP* [2008] 4 MLRH 530; [2010] 7 CLJ 220). It is incumbent on the applicant to provide to the Court

very good reasons why an appeal was not filed. If the appeal was restricted because the applicant was out of time, the applicant must show evidence that an application for an extension of time to file the appeal was made. In the recent decision of *Muhammad Nuzul Iqram Nurullail & Ors v. PP* [2018] MLRHU 271; [2018] 3 AMR 182 the High Court dismissed an application for revision when the applicant failed to file an appeal against an appealable decision.

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[20] In *Manokaran & Anor v. PP* [1978] CLJU 118; [1978] 1 LNS 118; [1979] 1 MLJ 262, Abdoolcader J (as he then was) dealt with the revisionary power in the following way:

I have however not only extensive powers of revision in criminal proceedings under the provisions of s. 325 of the Criminal Procedure Code but even wider powers conferred by s. 35 of the Courts of Judicature Act, 1964, and the Deputy Public Prosecutor agrees that in a case like this where there is an appeal against conviction on a plea of guilty it is open to me to deal with the conviction in the exercise of my power of revision if the circumstances of the case so warrant. I would merely add that in my view notwithstanding the provisions of s. 305 of the Criminal Procedure Code an appeal against a conviction on a plea of guilty will still lie if the charge discloses no offence in law, in which event the conviction itself would be illegal and a nullity.

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It is true that the matters complained of in this appeal have been brought to my notice by way of a record of appeal and the proceedings before me are headed in the criminal appeal, but, as I pointed out to, Counsel on both sides of the outset of this hearing, it is nevertheless open to me notwithstanding this to exercise my powers of revision in this matter, and I referred in this regard to the decision of the Privy Council in *In re Chumbidya & Ors.* to the effect that **when the High Court has before it on appeal a record of criminal proceedings, it can proceed to exercise its powers of revision if it chooses to do so and make the requisite order** although precluded by another provision in the Criminal Procedure Code from doing so in the appeal. (emphasis added)

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[21] Based upon the principles of law stated above, we find that the orders of DNAA and a further order that the applicant can be charged again on the said offences made by the learned Judicial Commissioner upon revision without the applicant and/or her counsel been notified of the hearing of the matter and be given an opportunity of being heard in this matter is gravely prejudicial and has certainly occasioned a serious miscarriage of justice to the applicant. The outcome of the revision might not be the same if the applicant had been heard on this critical issue. The argument raised by the learned Deputy Public Prosecutor that the issue of double filing of the same charges was merely a “technical glitch”, with respect could not hold water.

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[22] In the circumstances it is plain and obvious that there was a breach of the rules of natural justice in that the *audi alteram partem* rule had not been observed when the applicant was denied the notice and opportunity to

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A answer the issues and to defend herself. In addition, there is also clear breach of Arahan Pentadbiran Ketua Pendaftar Mahkamah Persekutuan Malaysia Bil. 2 Tahun 2018 para. 3(e)(iii) (although it has no binding effect on this Honourable Court) which is reproduced herein:

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Ruj. Taul / : PKPM/P_PKP.600-1/4/2
Ruj. Haul : 25 Julai 2018
Tarikh :

Pengerah Mahkamah Negeri
Semenanjung Malaysia

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Timbalan Pendaftar/Penolong Kanan Pendaftar
Mahkamah Tinggi Malaysia

YBhg. Datuk/Dato/Datin/Tuan/Puan

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ARAHAN PENTADBIRAN
KETUA PENDAFTAR MAHKAMAH PERSEKUTUAN MALAYSIA
BIL. 2 TAHUN 2018

SISTEM e-KEHAKIMAN DI MAHKAMAH:
PEMATUHAN PROSES KERJA BAGI PENDAFTARAN KES SEMAKAN
JENAYAH DAN SIVIL (R E VISION) DI MAHKAMAH TINGGI MALAYA

Dengan hormatnya saya merujuk kepada perkara di atas.

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2. Bagitujuan penyeragaman Proses Kerja Pendaftaran Kes Semakan Jenayah dan Sivil (Revision) di Mahkamah Tinggi Malaysia yang menggunakan Sistem e-Kehakiman, Arahan Ini hendaklah dipatuhi.

PROSES KERJA

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3. Proses kerja bagi pendaftaran kes semakan jenayah dan sivil (revision) di Mahkamah Tinggi Malaysia yang menggunakan Sistem e-Kehakiman adalah seperti yang berikut:

- (a) surat permohonan untuk semakan jenayah/sivil hendaklah dikemukakan oleh pemohon secara manual ke Pejabat Pendaftaran Mahkamah Tinggi di lokasi yang berkenaan;
- (b) Surat permohonan tersebut hendaklah direkodkan ke dalam buku rekod permohonan semakan jenayah dan sivil (revision) sebagaimana Lampiran Adan B;

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(c) Timbalan Pendaftar/Penolong Kanan Pendaftar hendaklah mengemukakan surat permohonan tersebut pada hari yang sama kepada Hakim/Pesuruhjaya Kehakiman untuk mendapatkan arahan lanjut;

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(d) sekiranya Hakim/Pesuruhjaya Kehakiman mendapati permohonan tersebut tidak perlu ditetapkan untuk pendengaran, Timbalan Pendaftar/Penolong Kanan Pendaftar hendaklah memaklumkan arahan tersebut kepada pihak-pihak dan mengemaskinikannya di dalam buku rekod permohonan semakan jenayah dan sivil (*revision*);

(e) sekiranya Hakim/Pesuruhjaya Kehakiman mendapati permohonan semakan perlu didengar, Timbalan Pendaftar/Penolong Kanan Pendaftar hendaklah—

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(i) mendaftarkan permohonan semakan melalui Sistem CMS dengan menggunakan Biro Perkhidmatan;

(ii) mengemas kini buku rekod permohonan semakan jenayah dan sivil (*revision*) dengan nombor pendaftaran kes yang dijana daripada Sistem CMS; dan

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(iii) memaklumkan nombor pendaftaran kes dan tarikh pendengaran permohonan kepada pihak-pihak;

(f) dalam keadaan semakan apa-apa perkara atau prosiding, sama ada sivil atau jenayah di mana-mana mahkamah rendah oleh Hakim/Pesuruhjaya Kehakiman atas usulnya sendiri, proses kerja dalam perenggan (e) adalah terpakai.

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4. Pemfaiian dokumen yang selanjutnya oleh pihak-pihak boleh dibuat secara dalam talian menggunakan nombor pendaftaran kes yang diberikan.

PERMULAAN KUAT KUASA

7. Arahan ini mula berkuat kuasa pada 1 Ogos 2018.

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Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

(DATO' SELLARAH BINTI HAJI MOHD TAHAR)
Ketua Pendaftar Mahkamah Bersekutuan Malaysia
Istana Kehakiman
PUTRAJAYA

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A [23] In the context of natural justice and its relation to the administrative powers, Raja Azlan Shah Ag LP (as His Royal Highness then was) in *Ketua Pengarah Kastam v. Ho Kwan Seng* [1975] CLJU 72; [1975] 1 LNS 72; [1977] 2 MLJ 152 held that:

B The rule of natural justice that no man may be condemned unheard applies to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled “judicial,” “quasi-judicial,” or “administrative” or whether or not the enabling statute makes provision for a hearing.

C [24] The above authority further shows that there are questions of law here which requires serious discussion.

D [25] Finally, although the respondent is not estopped from filing an application for revision in preference to an appeal, nevertheless we find that no reasons have been offered by the learned Deputy Public Prosecutor why an appeal was not filed against the decision of the learned Magistrate within the time permitted by law.

Conclusion

E [26] Having regard to all the foregoing reasons and the submissions made, we unanimously allowed the applicant notice of motion (encl. 1) paras. (a), (b), (c), (d), and (f) for leave to appeal since there are questions of law which have arisen in the course of the revision.

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